

PROPOSAL CERTIFICATION	
FIRM NAME	
ADDRESS	
TELEPHONE #	
FAX #	
CONTACT NAME AND TITLE	

PROPOSER REPRESENTATIONS

1. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.
2. Proposer additionally certifies that neither proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.
3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.
4. Proposer did not receive unauthorized information from any City staff member of City Consultant during the Proposal period except as provided for in the Request for Proposals package, formal addenda issued by the City, or the pre-proposal conference.
5. Proposer hereby certifies that the information contained in the proposal and all accompanying documentation is true and correct.
6. Please check the appropriate box below:
 - ☐ If the proposal is submitted by an individual, it shall be signed by him or her, and if he or she is doing business under a fictitious name, the proposal shall so state.
 - ☐ If the proposal is submitted by a partnership, the full names and addresses of all members and the address of the partnership shall be stated and the proposal shall be signed for all members by one or more members thereof.
 - ☐ If the proposal is submitted by a corporation, it shall be signed in the corporate name by an authorized officer or officers.
 - ☐ If the proposal is submitted by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.
 - ☐ If the proposal is signed by a joint venture, the full names and addresses of all members of the joint venture shall be stated and it shall be signed by each individual.

By signing below, the submission of a proposal with all accompanying documents shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that they have read and understand the RFP.

Authorized Representative Name (Sign name)	
Authorized Representative Name (Print name)	
Authorized Representative Title (Print title)	
Complete additional signatures below as required per # 6 on the previous page.	
Authorized Representative Name (Sign name)	
Authorized Representative Name (Print name)	
Authorized Representative Title (Print title)	
Authorized Representative Name (Sign name)	
Authorized Representative Name (Print name)	
Authorized Representative Title (Print title)	

City of San Jose

Request for Contracting Preference for Local and Small Businesses

Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE, you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the dollar value of the bid or quote. For example, a non-local vendor submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.

The following determinations have been made with respect to this procurement: (for official use only)

Type of Procurement	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
Type of Preference	<input type="checkbox"/> Price is Determinative		<input checked="" type="checkbox"/> Price is Not Determinative
Amount of Preference	LBE preference = 2.5% of Cost SBE preference = 2.5% of Cost		LBE preference = 5% of Points SBE preference = 5% of Points

In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.

Business Name			
Business Address			
Telephone Number			
Type of Business	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other (explain)

***LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

In order to qualify as an LBE you must provide the following information:

Current San Jose Business Tax Certificate Number	
Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County	

****SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. The number is for your entire business – NOT just local employees, or employees working in the office address given above.

Please state the number of employees that your Business has:

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (please check): ☐ Local Business Enterprise ☐ Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: _____, California

Date: _____

Signature: _____

Print name: _____

**CITY OF SAN JOSE
CONSULTANT AGREEMENT
STANDARD TERMS AND CONDITIONS**

(Referred exhibits not attached will be added to final agreement)

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from _____ to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$____). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the proceeding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor not an agent or employee of CITY; and as an independent contractor; CONSULTANT shall obtain no right to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's _____ is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the federal, state and local governments.

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAVIER.

CONSULTANT agrees that wavier by CITY of any breach or violation or any term or condition of this AGREEMENT shall not be deemed to be a wavier of any other term or condition contained herein or a wavier of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a wavier or any term or condition of this AGREEMENT.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.
- B. CONSULTANT shall maintain all documents and records which demonstrates performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representative, or CONSULTANT's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

[Certain consultant may have to comply with the following provisions as well]

CONSULTANT shall file an ASSUMING Office Disclosure Statement of Economic Interests (Form 700) as specified in EXHIBIT F, entitled "DISCLOSURE STATEMENT", which is attached hereto and incorporated herein. Such statement shall be filed within thirty (30) days of the date of this AGREEMENT and annually thereafter by the first of April. Upon termination of this AGREEMENT, CONSULTANT shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).

SECTION 19. GIFTS.

- A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY office or designated employee, which prohibition is found in /chapter 12.08 of the San Jose Municipal code.
- B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said chapter.
- C. The offer or giving of any gift prohibited by chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 21. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F (or G, if applicable), entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 22. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

To CONSULTANT:

Notice shall be deemed effective on the date personally delivered if, if mailed, three (3) days after deposit in the mail.

SECTION 23. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

EXHIBIT D**INSURANCE**

CONSULTANT, at CONSULTANT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including products and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsements CA 0025. Coverage shall also include Code 8 "hired autos" and code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors & Omissions.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location of the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Worker's Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

C. Deductible and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONSULTANT shall procure a bond

guaranteeing payment of losses and related investigations. Claim administrations and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope or protection afforded to CITY, its officers, employees, agents and contractors.
- b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents or contractors.
- d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage in its behalf.

Proof of insurance shall be mailed to the following address or any subsequent addressed as may be directed in writing by the risk Manager:

CITY OF SAN JOSE – Human Resources
Risk Management
200 East Santa Clara St., 3rd Floor Wing
San Jose, California 95113-1905
Attn: Andrea Orinion

G. **Subconsultants**

Consultant shall include all subconsultants as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

PREVIOUS CLIENT REFERENCE WORKSHEET

Provide reference information for the services you are proposing in a manner and environment similar in size and scope to the requirements of this proposal. Copy this form as appropriate.

Name of Customer	
Customer Address	
Customer Contact Name(s), Title and Phone number(s)	
Term of the Agreement	Start Date (mm/dd/yy) End Date (mm/dd/yy)
Annual Dollar Value of Contract	
Type of Contract	<input type="checkbox"/> Firm fixed price <input type="checkbox"/> Time and Material <input type="checkbox"/> Not to exceed <input type="checkbox"/> Cost plus fixed fee <input type="checkbox"/> Other (Please explain)
Brief description of work performed for this client (use additional sheets if necessary):	

CONFLICT OF INTEREST FORM

To be completed by consultants making proposals.

NAME: _____ **DATE:** _____

PROPOSED ASSIGNMENT: RFP# 070803 ESD, COOLING TOWERS AND INDUSTRIAL USE CONSULTANT SERVICES

In order for the City to assess whether the personnel proposed to be assigned by the successful Proposer to work on the Proposed Assignment have a conflict of interest, this form must be completed by each person that the Proposer intends to assign.

QUESTIONS	YES (Provide details.)	NO
1. Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?		<input type="checkbox"/>
<p>2. Stock and Investments</p> <p>a. Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?</p> <p>b. Does you spouse or a dependent own any stock in a company likely to be affected by or involved in the Proposed Assignment?</p> <p>c. Do you hold any investments in any entity (e.g. Partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</p> <p>d. Does your spouse or a dependent hold any investments in any entity (e.g. Partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is YES to any of the above questions, please provide the name of the company and the amount of stock or investment.</p>		<input type="checkbox"/>

CONFLICT OF INTEREST FORM

QUESTIONS	YES (Provide details.)	NO
<p>3. Employment & Consulting</p> <p>a. Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>b. Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>c. Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is YES to any of the above questions, please provide the name of the employer, nature of services provided and the dates employed or retained.</p>		<input type="checkbox"/>
<p>4. Payments or Gifts</p> <p>a. Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>b. Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is YES, please provide the amount the payment or value of the gift, the name and position of the payer/donor and the receipt date.</p>		<input type="checkbox"/>

CONFLICT OF INTEREST FORM

QUESTIONS	YES (Provide details.)	NO
5. Real Estate a. Do you own real property that is likely to be affected by or involved in the Proposed Assignment? b. Does your spouse or dependent own real property that is likely to be affected by or involved in the Proposed Assignment? If the answer is YES , please provide the location of this property.		<input type="checkbox"/>
6. Positions a. Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment? b. Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment? If the answer is YES , please provide the name of the entity and the title of the position held.		<input type="checkbox"/>

If during the course of the evaluation, any personal, external, or organizational impairments occur that may affect your ability to do the work and report findings impartially, notify the Program Manager immediately.

Signature: _____ DATE: _____
 Print
 Name: _____

**COOLING TOWER AND INDUSTRIAL USE CONSULTANT SERVICES
RATE SCHEDULE**

For the proposed term of this agreement, provide the information below.

[illegible]